In the

Supreme Court of the United States

October Term, 1902.

THE UNDERGROUND RAILROAD OF THE CITY OF NEW YORK, AND THE METROPOLITAN UNDERGROUND RAILROAD COMPANY,

Appellants,

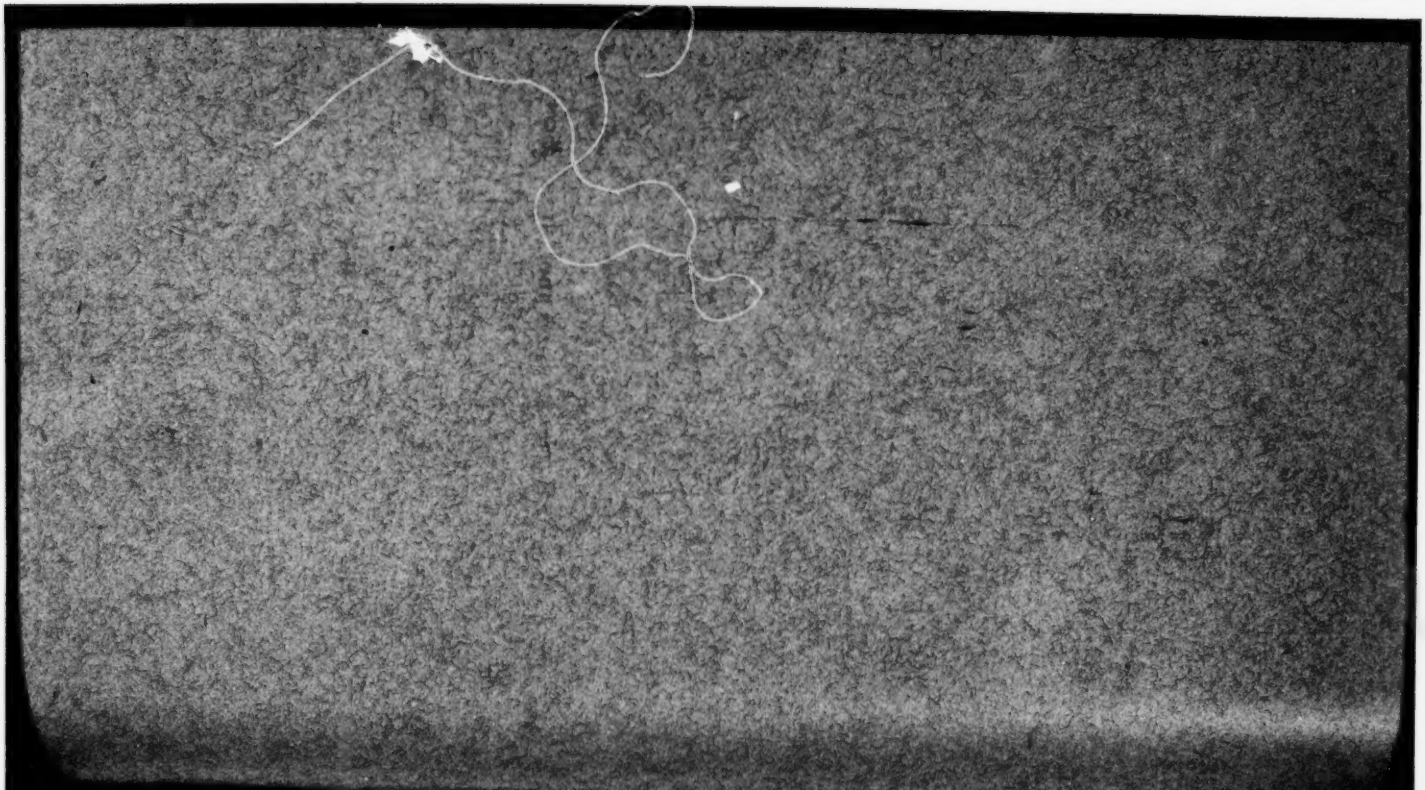
vs.

THE CITY OF NEW YORK, THE BOARD OF RAPID TRANSIT RAILROAD COMMISSIONERS FOR THE CITY OF NEW YORK, *et al.*,

Respondents.

BRIEF FOR RESPONDENTS, THE BOARD OF RAPID TRANSIT RAILROAD COMMISSIONERS FOR THE CITY OF NEW YORK, AND THE CITY OF NEW YORK.

EDWARD M. SHEPARD,
Of counsel for respondents,
66 Liberty Street,
New York City, N. Y.



IN THE

Supreme Court of the United States.

THE UNDERGROUND RAILROAD OF THE CITY OF NEW YORK and THE RAPID TRANSIT UNDERGROUND RAILROAD CO.,

Appellants,

vs.

THE CITY OF NEW YORK, ALEXANDER E. ORR and others, members of THE BOARD OF RAPID TRANSIT RAILROAD COMMISSIONERS OF THE CITY OF NEW YORK, *et al.*,

Respondents.

No. 489.

October, 1902.

Mem. for Respondents upon Appellants' Motion to Advance Cause.

The respondents concur with the appellants in the view that this appeal should be orally heard. It involves other questions than a jurisdictional one. But the defendants feel bound to submit to the Court that the papers present no sufficient reason that the cause should be advanced. They submit that no public interest requires the immediate hearing or disposition of the appeal. The affidavits upon which the appellants move refer to the allegations of the bill that the City of New York is insolvent, that the City has already more indebtedness than is authorized by the Constitution of the State of New York; that indebtedness incurred in the construction of the underground or

rapid transit railroad now under construction in the City would be unauthorized and void, and that the City has no means with which to pay for the private property which it proposes to take in the construction of the railroad. The defendants demurred for the reason that they were advised by their counsel that, as the Court below has adjudged, the complainants' bill presented no equity. For that reason it was quite unsuitable that the defendants should have answered and have permitted unnecessary litigation merely for the purpose of a formal denial of allegations entirely insufficient to support a decree. But now that the complainants present to the Court these allegations as a ground for a motion for advancement of the hearing of the suit, the defendants feel constrained upon the motion to submit, as they do submit herewith, the affidavit of Mr. Orr, one of the defendants and the president of the Board of Rapid Transit Railroad Commissioners, and also the affidavit of Mr. Grout, Comptroller of the City, that these allegations are untrue.

The defendants submit that the absence of any cause for exceptional haste is proved by the allegations of the bill itself, which shows that the important rights claimed by the plaintiffs accrued in the years 1881, 1883 and 1885; that the bill herein was not filed until July, 1901, and not until long after the City of New York and its Rapid Transit Board had arranged for the construction of the municipal rapid transit railroad which the complainants have sought in this suit to enjoin, and not until more than a year after such construction had actually begun.

It is, therefore, submitted that the complainants' motion should be denied.

November 28th, 1902.

EDWARD M. SHEPARD,
Of Counsel for Respondents.

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THE CITY OF NEW YORK, ALEXANDER E. ORR and others, members of THE BOARD OF RAPID TRANSIT RAILROAD COMMISSIONERS OF THE CITY OF NEW YORK, *et al.*,

Respondents.

No. 489.

October, 1902.

STATE OF NEW YORK, }
County of New York, } ss.:

ALEXANDER E. ORR, being duly sworn, says: I am one of the defendants and respondents in this cause. I am and have since the year 1894 (except only a few days in May, 1899,) been a member of and President of the Board of Rapid Transit Commissioners. I am personally very familiar with matters of rapid transit in the City of New York and am generally familiar with the situation of the said City. It is not true that the City of New York is insolvent, or that it has more indebtedness than is authorized by the Constitution of the State of New York, or that it proposes to incur additional indebtedness for the construction of its underground or rapid transit railroad or railroads which will be unauthorized or void, or that it has no means with which to pay for the private property which it proposes to take in the construction of the railroad. I am able to make this denial from

my general knowledge of the public situation of the said City and from official reports and statements open to every one. It is an undisputed matter of public knowledge in the City of New York that the City is highly solvent; that its bonds sell regularly and in the public market upon the basis of the very highest degree of solvency; that the obligations issued by the City to pay for the construction of its underground rapid transit railroad sell upon such a basis, and are conceded without dissent by all the principal financial persons and corporations in this City and State to be duly authorized and perfectly valid. The allegations to the contrary are, in my opinion, preposterous. The discussion of the question whether the City of New York has exceeded its debt limit which was had before the Appellate Division and which was referred to in the affidavit of James M. Fisk, Esq., upon which the complainants' present motion is made, took place not with reference to the present City of New York, but with reference to the former City of New York, and with reference to a time when the debt incurring capacity of the former City was far less than the present debt incurring capacity of the City.

Sworn to before me, this 29th day of November, 1902.

A. E. Orr

Seymour K. Fuller
Notary Public Kings Co.
Cert. filed in N.Y. Co.
[Notarial Seal]

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Respondents.

No. 489,

October, 1902.

STATE OF NEW YORK, }
County of New York, } ss.:

EDWARD M. GROUT, being duly sworn, says: I am the Comptroller of the City of New York and am the offi
Bird S. Coler, formerly the Comptroller of t
York, one of the defendants herein. As s
of the Board of Rapid Transit Railroad Commissioners of the said City, I am personally very familiar with matters of rapid transit in the City of New York and am generally familiar with the situation of the said City. It is not true that the City of New York is insolvent, or that it has more indebtedness than is authorized by the Constitution of the State of New York, or that it proposes to incur additional indebtedness for the construction of its underground or rapid transit railroad or railroads which will be unauthorized or void, or that it has no means with which to pay for the private property which it proposes to take in the construction of the railroad. I make this denial

upon my general knowledge of the public situation of the said City and upon the information I have as Comptroller of said City. It is an undisputed matter of public knowledge in the City of New York that the City is highly solvent; that its bonds sell regularly and in the public market upon the basis of the very highest degree of solvency; that the obligations issued by the City to pay for the construction of its underground rapid transit railroad sell upon such a basis, and are conceded without dissent by all the principal financial persons and corporations in this City and State to be duly authorized and perfectly valid. The allegations to the contrary are in my opinion preposterous. The discussion of the question whether the City of New York has exceeded its debt limit which was had before the Appellate Division and which was referred to in the affidavit of James M. Fisk, Esq., upon which the complainants' present motion is made, took place not with reference to the present City of New York, but with reference to the former City of New York, and with reference to a time when the debt incurring capacity of the former City was far less than the present debt incurring capacity of the City.

Sworn to before me, this 29th day of November, 1902. } Edward M. Grout

Seymour K. Fuller
Notary Public, Kings Co.
Cert. filed in N.Y. Co.
[Notarial seal]

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